

## MINUTE ORDER

CASE NUMBER: CIVIL NO. 19-00452 LEK-KJM

CASE NAME: Josephine Grace Lapina vs. David Gierlach et al.,

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JUDGE: Leslie E. Kobayashi

DATE: 2/26/2020

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COURT ACTION: EO: COURT ORDER DENYING AS MOOT DEFENDANTS BARBARA SHINTANI AND JANN WATANABE'S MOTION TO DISMISS WITH PREJUDICE

On January 6, 2020, Defendants Barbara Shintani ("Shintani") and Jann Watanabe ("Watanabe") filed their Motion to Dismiss with Prejudice ("Motion"). [Dkt. no. 31.] The Motion addresses pro se Plaintiff Josephine Grace Lapina's ("Plaintiff") Second Amended Complaint for Damages ("Second Amended Complaint"), [filed 12/10/19 (dkt. no. 14)]. The Motion is currently scheduled for hearing on March 27, 2020. See EO, filed 1/8/20 (dkt. no. 33).

After the filing of the Motion, the magistrate judge granted Plaintiff leave to file a third amended complaint by February 21, 2020. See order, filed 2/7/20 (dkt. no. 38), at 6. The magistrate judge later extended the filing deadline to March 6, 2020. See EO, filed 2/25/20 (dkt. no. 42). If Plaintiff files a third amended complaint, the Second Amended Complaint will be considered non-existent. See Lacey v. Maricopa Cty., 693 F.3d 896, 925 (9th Cir. 2012) (en banc) (stating that an "amended complaint supersedes the original, the latter being treated thereafter as non-existent" (citations and internal quotation marks omitted)). In light of Plaintiff's leave to file a third amended complaint, Shintani and Watanabe's Motion – which addresses the Second Amended Complaint – is DENIED AS MOOT. In other words, it is not necessary for Plaintiff, or any other party in this case, to respond to Shintani and Watanabe's Motion, and the March 27, 2020 hearing on the Motion will not take place.

The denial of Shintani and Watanabe's Motion is WITHOUT PREJUDICE to: 1) the filing of a new motion to dismiss addressing the third amended complaint; or 2) the renewal of the Motion, if Plaintiff fails to file a third amended complaint by March 6, 2020. If Plaintiff fails to file a third amended complaint by March 6, 2020, the Second Amended Complaint will remain the operative pleading, and Shintani and Watanabe can renew the Motion by filing a one-page notice stating they are renewing their request for dismissal of the Second Amended Complaint.

IT IS SO ORDERED.

Submitted by: Agalelei Elkington, Courtroom Manager